

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-967519 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Diamond Liana

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1531

Diamond Liana

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 July 1965, an Examiner of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman documents for six months outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS SANTA JUANA under authority of the document above described, on 20 July 1965, Appellant assaulted and battered crew member Amaya while the ship was under way on Puget Sound.

At the hearing on 22 July, Appellant voluntarily declined the opportunity to obtain counsel. Appellant entered a plea of guilty to the charge and specification. He states that he felt guilty and sorry for what he did and hoped Amaya would recover soon.

No evidence was introduced by either party in view of the plea of guilty.

The Investigating Officer's opening statement indicates that Appellant and Amaya engaged in a fist fight after Amaya invited Appellant out on deck and appellant acquiesced; Amaya's face was bloody, bruised and swollen, and he was lying unconscious on deck with Appellant standing over him when another crew member saw them; Amaya remained unconscious most of the time until after he was taken to a hospital at the next port later on the same day; and Amaya was still under observation at the hospital at the time of the hearing two days after the incident occurred.

On appeal, it is contended that Appellant was guilty of the lesser offense of mutual combat, but at the hearing, without benefit of counsel, Appellant pleaded guilty to the offense alleged because he thought he had committed assault and battery by striking Amaya regardless of the circumstances.

APPEARANCE: Kenneth W. Gale, Esquire, of San Pedro, California, of Counsel

Opinion

Appellant was guilty of mutual combat by voluntarily engaging in a fist fight with Amaya. But in view of Amaya's badly beaten condition after the fight, it is my opinion that Appellant used excessive force which amounted to assault and battery. Therefore, Appellant was not prejudiced by his lack of knowledge concerning the elements of assault and battery.

The order of six months' suspension is justified by the aggravated nature of the offense despite Appellant's prior clear record and the fact that this appears to be an isolated incident relative to Appellant's pattern of behavior.

Order

The order of the Examiner dated at Seattle, Washington, on 27 July 1965, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 2nd day of December 1965.

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